

9/20/01

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Hearing:
06 JUN 2001

Paper No. 19
AD

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Missouri Basin Municipal Power Agency

Serial No. 75/977,753

Sri K. Sankaran of Dorsey & Whitney, LLP for Missouri Basin
Municipal Power Agency.

Janice O'Lear, Managing Attorney, Law Office 112.

Before Simms, Hanak and Drost, Administrative Trademark
Judges.

Opinion by Drost, Administrative Trademark Judge:

On April 15, 1998, Missouri Basin Municipal Power
Agency (applicant) filed an intent-to-use application to
register the mark:



for services ultimately identified as:

Bill payment services in International Class 36;

Maintenance of utility distribution lines in
International Class 37;

Public utility services in International Class 39; and

Energy management, namely, energy engineering and
technical consultation services relating to
development, control, production, use, purchase and
conservation of energy; legislative consulting and
lobbying services in the utility field in
International Class 42.¹

On July 27, 1998, applicant filed an Amendment to
Allege Use of the mark for all four classes. The Amendment
alleged a date of first use and a date of first use in
commerce of May 1, 1998.

The Examining Attorney has required a disclaimer of
the words "Missouri River Energy Services" under the
provisions of §§ 2(e) and 6(a) of the Trademark Act. 15
U.S.C. §§ 1052(e) and 1056(a). The Examining Attorney
required a disclaimer because "such wording is primarily
geographically descriptive of the applicant's services."
Office Action dated December 22, 1998, p. 3. While
applicant did disclaim the words "Energy Services," it did
not disclaim the words, "Missouri River." At that point,
the Examining Attorney made the refusal to register the

¹ Serial No. 75/977,753.

mark "MISSOURI RIVER ENERGY SERVICES" and design without a disclaimer of the term "MISSOURI RIVER ENERGY SERVICES" final.² After the refusal was made final, this appeal followed. Applicant and the Examining Attorney have submitted briefs, but only applicant appeared for an oral hearing.

The Board has set out the following test to use in determining whether a mark is primarily geographically descriptive:

[T]he Trademark Examining attorney would need to submit evidence to establish a public association of the goods with that place if, the place named in the mark may be so obscure or remote that purchasers would fail to recognize the term as indicating the geographical source of the goods to which the mark is applied or (2) an admitted well-recognized term may have other meanings, such that the term's geographical significance may not be the primary significance to prospective purchasers. Where, on the other hand, there is no genuine issue that the geographical significance of a term is its primary significance and where the geographical place is neither obscure nor remote, a public association of the goods with the place may ordinarily be presumed from the fact that the applicant's goods come from the geographical place named in the mark.

² The Examining Attorney's Appeal Brief makes clear that the requirement for a disclaimer was based on the Examining Attorney's determination that the "proposed mark is unregistrable because it is primarily geographically descriptive of the applicant's services." Appeal Brief, p. 1. While there is language in the final Office action and the decision on reconsideration that also refers to the descriptiveness of the mark and Section 2(e)(1) of the Trademark Act, it is clear to us that there is no independent "merely descriptive" basis to require a disclaimer of the term "Missouri River" if the term is ultimately determined not to be primarily geographically descriptive.

In re Handler Fenton Westerns, Inc., 214 USPQ 848, 849-50 (TTAB 1982).

We start our discussion with the applicant's services identified as "public utility services." We conclude that the term "Missouri River" is primarily geographically descriptive for public utility services. Our initial question is whether the term "Missouri River" is a geographic term. Applicant asserts quite simply that "[t]he Missouri River is a river. It is not a place." Applicant's Br., p. 10. No doubt, the overwhelming majority of geographically descriptive cases involve places that are located on land. We note that even the TMEP does not use the term "river" when it discusses geographical descriptiveness. TMEP 1210.02 ("The name of a geographic location such as a country, city, state, locality, region, area or street is refused registration on the Principal Register if it is primarily geographically descriptive..."). However, there is case law supporting the argument that the rivers and lakes can be geographic terms for purposes of Section 2(e)(2) and 2(e)(3) of the Trademark Act. Some cases date to the pre-Lanham Act days when a term was refused registration if it merely appeared in an atlas or gazetteer. In re Nantucket, Inc., 677 F.2d 95, 213 USPQ

889, 892 (CCPA 1982) (See the discussion of pre-Lanham Act case law on geographically descriptive cases). Examples of rivers held geographically descriptive include the following cases. In re California Perfume Co. Inc., 56 F.2d 885 (CCPA 1932) (AVON, name of a river in England) Ex parte Kem Card Sales Corp., 39 USPQ 354 (Comm'r Pat. 1938) (KEM, name of a river in Russia). More modern case law also recognizes that names of rivers and lakes can be geographically descriptive. Tonka Corp. v. Tonka Phone Inc., 229 USPQ 747, 753 (D. Minn. 1985) (TONKA, commonly used to refer to the Lake Minnetonka region in Minnesota, is a geographical mark, but registration was incontestable); Powder River Oil Co. v. Powder River Petroleum Corp., 23 USPQ2d 1037, 1041 (Wyo. Sup. Ct. 1992) (POWDER RIVER OIL COMPANY descriptive of the business and the geographic area where the business is conducted).

While the case law on geographical descriptiveness for rivers and lakes is less than overwhelming, we know of no reason why the Trademark Act's prohibition against the registration of terms that are primarily geographically descriptive would not include rivers and lakes within its definition. 15 U.S.C. § 1052(e)(2). Certain products such as fish actually come from rivers and lakes and certain services such as boat tours are actually rendered on rivers

and lakes. Thus, a blanket exemption for the names of rivers and lakes from being geographically descriptive would not be appropriate. However, the names of these rivers and lakes are not always interchangeable with their nearby land locations, so the name of a river may not necessarily be primarily geographically descriptive of goods manufactured or services performed near the lake or river.

Another question we address concerns whether the term "Missouri River" is remote or obscure, as applicant claims, because in that case, the mark would not be primarily geographically descriptive. The Federal Circuit has quoted the Board as correctly saying:

[H]ere a refusal of registration is based on the finding that a mark is primarily geographically descriptive of the goods, that is, the goods actually come from the geographical place designated in the mark, the Examining Attorney must submit evidence to establish a public association of the goods with the place if, for example, there exists a genuine issue raised that the place named in the mark is *so obscure or remote that purchasers would fail to recognize the term as indicating the geographical source of the goods.*

In re Societe Generale Des Eaux Minerales de Vittel S.A.,

824 F.2d 957, 3 USPQ2d 1450, 1451 (Fed. Cir. 1987)

(emphasis by Court). In that case, the Court found that the village of Vittel in the Voges region of France was indeed remote and obscure. Similarly, we have found small

villages in Germany to be remote and obscure, when the village name is applied to beer brewed in those villages. In re Brauerie: Aying Franz Inselkammer KG, 217 USPQ 73 (TTAB 1983) (Aying); In re Bavaria St. Pauli Brauerie AG, 222 USPQ 926 (TTAB 1984) (Jever).

The term "Missouri River" is obviously in a different class of geographic terms, as viewed by potential purchasers in this country, than the names of the European villages of Vittel, Aying, and Jever. Even with the limited evidence we have of record in this case, we can easily discern that the Missouri River is a significant geographic location.

Missouri 1. River, cen. and NW cen. U.S.; formed by the confluence of Jefferson, Madison, and Gallatin rivers in Gallatin co., S Montana; flows E to cen. North Dakota, then S across South Dakota to form E Section of South Dakota-Nebraska boundary, and the Nebraska-Iowa and Nebraska-Missouri boundaries and the N Section of the Kansas-Missouri boundary, turns E. across cen. Missouri and joins the Mississippi River ab. 10 mi. (16 km.) N of St. Louis; 2466 mi. (3968 km.) long (or 2683 mi. or 4317 km. incl. longest tributaries to ultimate source) to its junction with the Mississippi River. During high water, navigable by flat-bottomed boats nearly to Great Falls, Montana.

Merriam-Webster's Geographical Dictionary (3rd ed. 1998).

The Missouri River is over 2400 miles long and it flows through or forms the border of Montana, North Dakota, South Dakota, Nebraska, Iowa, and Missouri. It is navigable as far as Montana, and one of the fifty States is

named after it. Id. In the United States, which is the only country we are concerned with in this analysis, we have no doubt that the Missouri River is not a remote and obscure term.

The next question is whether there is a services/place relationship in this case. Normally, we can presume that there is such a relationship if the goods or services come from that place, and the place is not remote and obscure. See Vittel and Handler Fenton. In this case, applicant has clearly established that (1) there are hydroelectric power plants on the Missouri River and (2) applicant's member utilities get power from the owner of these power plants. Therefore, there is a services/place relationship between the Missouri River and applicant's utility services.

Applicant's Chief Executive Officer acknowledged that:

There are hydroelectric plants on the Missouri River, but these are owned and operated by the federal government, and the power they generate is marketed by WAPA [Western Area Power Administration].

Heller declaration, p. 6.

In addition, applicant's members:

rely primarily on power allocated to them by the federal government's Western Area Power Administration ("WAPA"), which markets the electricity from federally owned generation facilities.

Heller declaration, p. 3.

Also, applicant's website notes that "[o]ur long term members have allocations of hydroelectricity from the Western Area Power Administration accounting for almost 60 percent of their power needs."

<http://www.mrenergy.com/resources.htm>. Applicant coordinates the delivery of its members' WAPA allocations. Id. Therefore, as applicant has established, the Missouri River is the source of hydroelectric power. This power, along with electricity from other sources, is allocated to applicant's member utilities, and applicant coordinates the delivery of these allocations. Many of its members and applicant are located in states that border the Missouri River. Because there is a clearly established relationship between electrical power and the Missouri River, we conclude that the term "Missouri River" is primarily geographically descriptive for applicant's public utility services and the power from the hydroelectric plants on the Missouri River.

Next, we look to see if there is a services/place relationship with applicant's maintenance of utility distribution lines and energy management, namely, energy engineering and technical consultation services relating to development, control, production, use, purchase and

conservation of energy. Recently, the Court of Appeals for the Federal Circuit has provided guidance on this subject.

In the modern marketing context geographic regions that are noted for certain products or services actively promote and adapt their specialties to fit changing consumer needs. Thus we see no reason to believe that a modern merchant of Venice would not expand on the traditional Venetian products listed by the Board, to begin marketing products or services related to such goods. Similarly, for the consumer's perspective, we also find no reason to believe that the public strictly limits its association of a place to the geographic region's traditional products or services. Because we consider that consumers may assume that geographic regions, like commercial actors, are likely to expand from their traditional goods or services into related goods or services, we hold that the registrability of a geographic mark may be measured against the public's association of that region with both its traditional goods and any related goods or services that the public is likely to believe originate there. The essence of the test is whether consumers are likely to be confused by the source of the related goods identified by a distinctive geographic mark.

In re Save Venice New York, Inc., slip op., p. 11 (Fed. Cir. July 27, 2001).

Here, we find that applicant's "maintenance of utility distribution lines" and "energy management, namely, energy engineering and technical consultation services relating to development, control, production, use, purchase and conservation of energy" are related to applicant's public utility lines services. A source of public utility services would likely also be the source of the related services of maintaining utility distribution lines over

which the power would be distributed and managing, conserving and controlling energy.³ Therefore, we conclude that the term "Missouri River" would be primarily geographically descriptive of these services as well.

In addition to these arguments, we also make the following points regarding the geographical descriptiveness of the term "Missouri River" for public utility services. First, we note that applicant's term is not merely "Missouri River" but "Missouri River Energy Services." Applicant has offered to disclaim the words "Energy Services." The fact that applicant has included highly descriptive or generic wording along with its geographically descriptive term does not convert a geographic term into a non-geographic term. In re Compagnie Generale Maritime, 993 F.2d 841, 26 USPQ2d 1652, 26 USPQ2d 1652 (Fed. Cir. 1993) (FRENCH LINE (stylized) primarily geographically descriptive of goods and services from France); In re Cambridge Digital Systems, 1 USPQ2d 1659, 1662 (TTAB 1986) (CAMBRIDGE DIGITAL and design primarily geographically descriptive when applicant's place of business is Cambridge, Massachusetts); In re

³ Inasmuch as the term is geographically descriptive of some of the services in Class 42, we do not have to determine if it is descriptive for all the services in the class in order for the refusal to be proper. In re Analog Devices Inc., 6 USPQ2d 1808, 1810 (TTAB 1988).

Carolina Apparel, 48 USPQ2d 1542, 1543 (TTAB 1998) ("The addition of a generic term to a geographic term does not avoid the refusal of primary geographic descriptiveness").

Also, the fact that applicant's services may be offered outside the Missouri River area does not mean that the term is no longer primarily geographically descriptive. Compagnie Generale Maritime, 26 USPQ2d at 1655 ("Certainly, all of the goods and services would either originate in France or should be considered as if they did because they are sold by a French company"); In re California Pizza Kitchen, Inc., 10 USPQ2d 1704, 1706 (TTAB 1988) ("It is the perception of the public as to the geographical significance of the mark which controls whether registration should be refused pursuant to section 2(e)(2), not whether an applicant renders the service or manufactures some of the goods outside of the geographical area named in the mark").

Applicant also cites several cases to support his argument that the term "Missouri River" is not primarily geographically descriptive of its utility and related services. World Carpets, Inc. v. Dick Littrell's New World Carpets, 438 F.2d 482, 168 USPQ 609 (5th Cir. 1971) (WORLD); In re Dixie Insurance Co., 213 USPQ 514 (TTAB 1984) (DIXIE); In re John Harvey & Sons, Ltd., 32 USPQ2d 1451

(TTAB 1993); In re Gale Hyman, Inc., 15 USPQ2d 1478 (TTAB 1990). These cases involve much more nebulous or broad terms, which are not primarily geographic terms ("world" and "Dixie"), a small English city (Bristol, England), or a street (Sunset Boulevard). They do not indicate that the name of a well-known river is not primarily geographically descriptive of public utility services that receive hydroelectric power for plants on the river.⁴ In this case, inasmuch as applicant's public utility services and the related services of maintenance of utility distribution lines and energy management services come from the Missouri River, there is a services/place relationship.

Also, applicant's citation of third-party registrations does not establish that its mark is not primarily geographically descriptive. The marks in most of those cases are substantially different. Even if some of the registrations supported applicant's argument, the "PTO's allowance of such prior registrations does not bind the Board or this court." In re Nett Designs, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). While applicant also points to the publication of its other marks

⁴ In addition, applicant cites In re Yardley of London, Inc., 165 USPQ 272 (TTAB 1970). Unlike Yardley, the record establishes the connection between the "Missouri River" and electrical power.

for other services without a disclaimer of the term "Missouri River," those applications were intent-to-use applications, and we do not know what the record was in those files. In addition, they are for different services that must be separately evaluated under the facts in the record of each case. Loew's Theatres, 226 USPQ at 869.

Finally, regarding the bill payment services, we are reluctant to find that bill payment services are related to public utility services based on the evidence in this case. In Save Venice, the examining attorney established that Venice was known for a wide variety of goods and services (glass, lace, jewelry, textiles, printing and publishing) and, therefore, additional products and services would also be likely to come from Venice. In this case, there is no evidence in the record that the Missouri River would be associated with anything other than public utility and energy-related services. We have no basis to conclude that applicant's bill payment services actually originate in or near the Missouri River.

If applicant's services do not actually come from the geographical place named in the mark, the mark would not be geographically descriptive. The question now becomes whether the term "Missouri River" is geographically descriptive of applicant's bill payment services when

applicant is headquartered in Sioux Falls, South Dakota, which is not on the Missouri River.

Unlike the situation in which the Missouri River is the source of hydroelectric power for public utility services, the examining attorney did not establish that the Missouri River is the source of bill payment services. Also, there is no evidence that the term "Missouri River" is a term that is applied to a defined region and that applicant's bill payment services originate in that region. While we can speculate as to whether Missouri River is geographically descriptive of applicant's bill payment services from Sioux Falls, South Dakota, ultimately we need evidence to support our speculation. Simply noting that a major river runs somewhere in the general area in which applicant's headquarters is located is not enough evidence to demonstrate that the name of the river geographically describes the region. Beyond applicant's trade name, we simply do not have the necessary evidence, and we decline to resort to taking extensive judicial notice to fill in any gaps in the record. Therefore, we find that the term "Missouri River" is not primarily geographically descriptive for bill payment services on the record before us.

DECISION: The requirement for a disclaimer of the term MISSOURI RIVER ENERGY SERVICES apart from the mark as shown, and the refusal to register in the absence of such disclaimer, are affirmed for Classes 37, 39, and 42. However, this refusal will be set aside if, within thirty days of the date stamped on this decision, applicant files with the Board a disclaimer, in proper standardized form, of MISSOURI RIVER ENERGY SERVICES. See Trademark Rule 2.142(g). The requirement for a disclaimer of the term "Missouri River" in Class 36 is reversed.

Simms, Administrative Trademark Judge, concurring in part and dissenting in part:

While I agree with the majority's conclusion, albeit for a different reason, that "Missouri River" is primarily geographically descriptive of applicant's public utility, maintenance and energy management services, I believe the majority should also have found that this term is primarily geographically descriptive of applicant's bill payment services as well. My reasons follow.

First, the record of this case shows that applicant, the Missouri Basin Municipal Power Agency, changed its name and service mark to Missouri River Energy Services. An April 1998 letter distributed by applicant stated:

After several months of careful consideration, we are pleased to announce a new name for **Missouri Basin Municipal Power Agency**. With the dramatic changes occurring in our industry, we decided the time was right to pursue a name, which more accurately reflects both our history and our future. We explored what we have been, and what we are becoming. Effective May 1, we will be doing business as **Missouri River Energy Services**. [Emphasis in original]

In the face of this evidence, it is difficult to believe applicant's argument in its brief that "Missouri River" in its name and mark would not be taken as an indicator of geographic origin of applicant's services, but would instead connote only "greatness, strength, authority, and influence." Applicant's own words indicate that "Missouri

River" "accurately reflects both [applicant's] history and [its] future."

Moreover, although not mentioned by the majority, I believe that the design element in applicant's mark (shown below) also serves to reinforce the geographically descriptive significance of these very prominent words in its mark for all of the services rendered under the mark. The image shown next to the words "Missouri River" can only help emphasize the significance of these words in the mark.

The Court in *Vittel*, cited by the majority, indicated that the Board was correct in saying:

[H]ere a refusal of registration is based on the finding that a mark is primarily geographically descriptive of the goods, that is, the goods actually come from the geographical place designated in the mark, the Examining Attorney must submit evidence to establish a public association of the goods with that place if, for example, there exists a genuine issue raised that the place named in the mark is *so obscure or remote that purchasers would fail to recognize* the term as indicating the geographical source of the goods. . . . [Emphasis by Court.]

In other words, if the term we are dealing with has primary geographic significance, then there is a presumption of a

goods- or services/place association if applicant's goods or services come from the place named in the mark. The public is likely to believe that the goods or services originate in the place named in the mark where the term has primary geographic significance (that is, the geographic place is neither obscure nor remote and has no other meanings). If, however, there is a question about whether the term has primary geographic significance, or if the geographic term is of a remote or obscure location, then the Office must submit evidence to establish the goods- or services/place association.

The term "Missouri River" in applicant's mark is clearly primarily geographical in nature, and the majority has so found, stating that this well known river, over 2400 miles long and flowing through or bordering six states, has strong geographic significance. It is the longest river in the United States, passes through or near such cities as Omaha, Kansas City and St. Louis, drains an area of over a half million square miles, and is the main tributary of the Mississippi River. Under the case law, which the majority cites, there is, therefore, ordinarily a presumption of a services/place association if applicant's services originate in the place named in the mark. Following this

principle, I would conclude that the mark is unregistrable for all of applicant's services without a disclaimer.

However, while reciting the traditional *Handler Fenton Westerns* test, approved by the Court in *Vittel*, the majority fails to give any reason why the services/place presumption is not being used in this case. Instead, after concluding that "Missouri River" has primary geographic significance and reciting the general rule about presuming a services/place connection if the services come from the place named in the mark, the majority immediately launches into a discussion of the evidence in the file about a services/place association. This is simply not understood. Because all, or at least a substantial part, of applicant's services come from or are rendered near the Missouri River or the Missouri River valley, we may make the presumption of this services/place association.⁵ Then, it is applicant's burden to attempt to rebut this presumption.

Based on the evidence (rather than any presumption), the majority has found a services/place association between applicant's public utility services and applicant's

⁵ However, even if the presumption is not applied, the evidence of record (that power plants are located along the Missouri River, that applicant's member utilities get most of their power from the owner of these plants, and that applicant coordinates the delivery of the members' allocations) provides evidence that the public would indeed make this association with all of applicant's services.

maintenance of distribution lines and energy management services (these services "come from the Missouri River," according to the majority). Yet, when applicant's bill payment services are considered, the majority faults the Examining Attorney for not providing any evidence that the term "Missouri River" is "applied to a defined region," and, unlike with respect to the other services, states that these services do not come from or near the place named in the mark. But applicant's bill payment services, in large part, do in fact come from or are rendered near the same place as its other services--either from or near the Missouri River or the Missouri River valley. I simply do not understand, if applicant's maintenance of distribution lines (obviously not all adjacent to the Missouri River, but provided in the communities where the lines are located) and energy engineering and technical consultation services relating to the development, use, purchase and conservation of energy can be said to "come from the Missouri River," why its bill payment services are for some reason said to come from applicant's headquarters in Sioux Falls (about 50 miles away from the Missouri River itself), or why the Examining Attorney must establish some "defined region" (presumably a land area) called the Missouri River

for these services. If a term names the source of applicant's public utility, maintenance of lines and engineering and consultation services, then it is just as likely in my view to be perceived as naming the source of the related services involving the payment of customers' utility bills.

In this regard, applicant's specimens show that these bill payment services are for the "automatic payment of your Missouri River Energy Services bills [that] can save you time, money, and more." Applicant commenced use of its mark for all of its services on the same day. And applicant has disclaimed the words "Energy Services" for all classes, including the bill payment services, *admitting that "Energy Services" in its mark merely describes its bill payment services.* Viewed in that light, the rationale is simply not understood for finding these services too unrelated to the remainder of applicant's services to be treated in a similar manner. Certainly, if the words "Energy Services" merely describes applicant's utility bill payment services, then it is indeed difficult to understand why these services are so unrelated to the public utility services that one must look to see what evidence there is of a services/place association, which approach I believe

to be erroneous in any event under the circumstances of this case.

One could reasonably ask, "Are these bill payment services any more unrelated to applicant's public utility services than potpourri, lamps, bedding and residential furniture are to lace, jewelry, glass, textiles, printing involved in the *Save Venice* case, cited by the majority?" See the following language, some of which is also noted by the majority, from that case, involving the question of geographic deceptive misdescriptiveness:

In the modern marketing context, geographic regions that are noted for certain products or services actively promote and adapt their specialties to fit changing consumer needs. Thus we see no reason to believe that a modern merchant of Venice would not expand on the traditional Venetian products listed by the Board, to begin marketing products or services related to such goods. Similarly, from the consumer's perspective, we also find no reason to believe that the public strictly limits its association of a place to the geographic region's traditional products or services. Because we consider that consumers may assume that geographic regions, like other commercial actors, are likely to expand from their traditional goods or services into related goods or services, we hold that the registrability of a geographic mark may be measured against the public's association of that region with both its traditional goods and any related goods or services that the public is likely to believe originate there. The essence of the test is whether consumers are likely to be confused by the source of the related goods identified by a distinctive geographic mark.

In its application of the "related goods" test, the Board found that many of applicant's goods "reflect product types, decorative themes and material compositions" associated with the city of Venice, Italy. As a result, the Board concluded that consumers would make a goods/place association between Venice, Italy and applicant's related goods. We agree with the Board that certain derivative "related goods" carrying a distinctive geographic mark would likely confuse consumers as to the source of the "related goods."⁶

Moreover, it seems to me that the burden on an Examining Attorney of showing a services/place association, required by the majority, between bill payment services and the Missouri River is an onerous one that cannot be met. If one searches the Nexis database of news and magazine stories to find "bill payment" discussed in any story that also mentions the Missouri River, one retrieves absolutely nothing, as one might expect.

Also, the majority's statement that the names of rivers and lakes are not always "interchangeable" with their nearby land locations is not understood. "Interchangeability" of rivers with nearby land locations

⁶ Unlike in geographic deceptive misdescriptiveness cases (like *Save Venice*), however, where there must be evidence to establish that there is an association between applicant's goods or services and the geographic place named in the mark because applicant's goods or services do not come from that place, no such requirement is normally imposed in geographic descriptiveness cases so long as the asserted mark has primary geographic significance and the goods or services come from the

is not the issue. The question is, are applicant's services likely to be associated by the relevant public with the geographic place named in the mark. In my view, if the area near a river or other body of water is the location of significant commercial activity (as is the Missouri River in this case), then I believe that the public would inevitably make a goods- or services/place association. Here, the river is presumed to be associated with applicant's services if applicant is performing those services near the river, which it is. Only if there were a lack of commercial activity in the region of a river or a body of water would one not make such an association. See, for example, *In re Nantucket, Inc.*, 677 F.2d 95, 213 USPQ 889, 897 (CCPA 1982)(Nies, J., concurring)(use of "the names of places devoid of commercial activity" is considered "arbitrary"). By way of example, a mark such as "Lake Tahoe Auto Repair" would be geographically descriptive, in my opinion, but a similar generic term with a remote, obscure or desolate body of water would not be.

Suffice it to say that this decision, as it relates to applicant's bill payment services and other services, deviates from established precedent. I would affirm the

place named in the mark. I believe the majority has failed to recognize this significant distinction.

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requirement for a disclaimer in all classes. Registration should only be permitted without a disclaimer of the words "Missouri River" when these words in the asserted mark have acquired distinctiveness.